

AMENDED IN SENATE AUGUST 12, 2002

AMENDED IN SENATE JUNE 25, 2002

AMENDED IN SENATE JUNE 10, 2002

AMENDED IN ASSEMBLY MAY 14, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1393**

**Introduced by Assembly Member Thomson**

February 23, 2001

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An act to amend Sections 175.5, 13207, 13301, 13323, and 13328 of, to add Sections 13228.14 and 13228.15 to, and to repeal Section 13302 of, the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 1393, as amended, Thomson. Water quality.

(1) Under the Porter-Cologne Water Quality Control Act, the State Water Resources Control Board and the California regional water quality control boards are the principal state agencies with regulatory authority over water quality. Existing law prohibits a member of the state board or a regional board from participating in certain board actions in which the board member has a direct personal financial interest, as defined by a provision in the Government Code that has been repealed.

This bill, instead, would prohibit those board members from participating in those specified board actions in which those members have a financial interest within the meaning of the Political Reform Act of 1974.

(2) The act authorizes, or in certain cases requires, a panel of a regional board to conduct proceedings.

This bill would delete those provisions and would authorize a regional board to conduct certain hearings or investigations by means of a panel of 3 or more members of the regional board. The bill would require any final action in the matter to be taken by the regional board and would authorize that board to take additional evidence and to adopt, with or without revision, or reject, the proposed decision of the panel. The bill would authorize the members of a regional board, or their designees, to carry out prehearing conferences for the purposes of addressing matters, including but not limited to, exploration of settlement possibilities, clarification of issues, and objections to evidence. The bill would provide that no party who appears before a panel or at a prehearing conference is precluded from appearing before the regional board at any subsequent hearing relating to the matter.

(3) *The act authorizes any executive officer of a regional board to issue a complaint to any person on whom administrative civil liability may be imposed for a violation of a waste discharge requirement. The act authorizes the complaint to be served by personal notice or certified mail and requires that a hearing be conducted before at least a 3 member panel of the regional board not later than 60 days from the date the party is served. The act requires that orders imposing administrative civil liability be served by personal service or registered mail. The act also authorizes the state board to issue administrative civil liability for a violation of a waste discharge requirement.*

*This bill would instead require that the hearing before the regional board be conducted not later than 90 days from the date the party is served and would delete the requirement that the hearing be conducted before a 3 member panel of the regional board. The bill would instead authorize a complaint and an order to be served by certified mail or in any manner in which a summons may be served. The bill would require, in a proceeding before the state board to impose administrative civil liability for a violation of a waste discharge requirement, that the executive director of the state board issue the complaint and hold a hearing within 90 days of the date the party has been served.*

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.



*The people of the State of California do enact as follows:*

SECTION 1. Section 175.5 of the Water Code is amended to read:

175.5. (a) No member of the board shall participate in any board action pursuant to Article 2 (commencing with Section 13320) of Chapter 5 of Division 7 which involves himself or herself or any waste discharger with which the board member is connected as a director, officer or employee, or in which the board member has a financial interest in the decision within the meaning of Section 87103 of the Government Code.

(b) No board member shall participate in any proceeding before any regional board as a consultant or in any other capacity on behalf of any waste discharger.

(c) Upon the request of any person, or on the Attorney General's own initiative, the Attorney General may file a complaint in the superior court for the county in which the board has its principal office alleging that a board member has knowingly violated this section and the facts upon which the allegation is based and asking that the member be removed from office. Further proceedings shall be in accordance as near as may be with rules governing civil actions. If after trial the court finds that the board member has knowingly violated this section it shall pronounce judgment that the member be removed from office.

SEC. 2. Section 13207 of the Water Code is amended to read:

13207. (a) No member of a regional board shall participate in any board action pursuant to Article 4 (commencing with Section 13260) of Chapter 4, or Article 1 (commencing with Section 13300) of Chapter 5, of this division which involves himself or herself or any waste discharger with which he or she is connected as a director, officer or employee, or in which he or she has a financial interest in the decision within the meaning of Section 87103 of the Government Code.

(b) No board member shall participate in any proceeding before any regional board or the state board as a consultant or in any other capacity on behalf of any waste discharger.

(c) Upon the request of any person, or on the Attorney General's own initiative, the Attorney General may file a complaint in the superior court for the county in which the regional board has its principal office alleging that a board member has

1 knowingly violated this section and the facts upon which the  
2 allegation is based and asking that the member be removed from  
3 office. Further proceedings shall be in accordance as near as may  
4 be with rules governing civil actions. If after trial the court finds  
5 that the board member has knowingly violated this section it shall  
6 pronounce judgment that the member be removed from office.

7 SEC. 3. Section 13228.14 is added to the Water Code, to read:

8 13228.14. (a) Any hearing or investigation by a regional  
9 board relating to investigating the quality of waters of the state,  
10 prescribing waste discharge requirements, issuing cease and desist  
11 orders, requiring the cleanup or abatement of waste, or imposing  
12 administrative civil liabilities or penalties may be conducted by a  
13 panel of three or more members of the regional board, but any final  
14 action in the matter shall be taken by the regional board. Due notice  
15 of any hearing shall be given to all affected persons. After a  
16 hearing, the panel shall report its proposed decision and order to  
17 the regional board and shall supply a copy to all parties who  
18 appeared at the hearing and requested a copy.

19 (b) No party who appears before the panel is precluded from  
20 appearing before the regional board at any subsequent hearing  
21 relating to the matter. Members of the panel are not disqualified  
22 from sitting as members of the regional board in deciding the  
23 matter.

24 (c) The regional board, after making an independent review of  
25 the record and taking additional evidence as may be necessary,  
26 may adopt, with or without revision, or reject, the proposed  
27 decision and order of the panel.

28 SEC. 4. Section 13228.15 is added to the Water Code, to read:

29 13228.15. The members of a regional board, or their  
30 designees, with respect to matters within the regional board's  
31 jurisdiction, may carry out prehearing conferences to address any  
32 of the matters described in subdivision (b) of Section 11511.5 of  
33 the Government Code. No party who appears at a prehearing  
34 conference is precluded from appearing before the regional board  
35 at any subsequent hearing relating to the matter.

36 SEC. 5. Section 13301 of the Water Code is amended to read:

37 13301. When a regional board finds that a discharge of waste  
38 is taking place, or threatening to take place, in violation of  
39 requirements or discharge prohibitions prescribed by the regional  
40 board or the state board, the board may issue an order to cease and

1 desist and direct that those persons not complying with the  
2 requirements or discharge prohibitions (a) comply forthwith, (b)  
3 comply in accordance with a time schedule set by the board, or (c)  
4 in the event of a threatened violation, take appropriate remedial or  
5 preventive action. In the event of an existing or threatened  
6 violation of waste discharge requirements in the operation of a  
7 community sewer system, cease and desist orders may restrict or  
8 prohibit the volume, type, or concentration of waste that might be  
9 added to that system by dischargers who did not discharge into the  
10 system prior to the issuance of the cease and desist order. Cease and  
11 desist orders may be issued directly by a board, after notice and  
12 hearing.

13 SEC. 6. Section 13302 of the Water Code is repealed.

14 SEC. 7. Section 13323 of the Water Code is amended to read:

15 ~~13323. (a) Any executive officer of a regional board may~~  
16 ~~issue a complaint to any person on whom administrative civil~~  
17 ~~liability may be imposed pursuant to this article. The complaint~~  
18 ~~shall allege the act or failure to act that constitutes a violation of~~  
19 ~~law, the provision of law authorizing civil liability to be imposed~~  
20 ~~pursuant to this article, and the proposed civil liability.~~

21 ~~(b) The complaint shall be served by personal notice or~~  
22 ~~certified mail, and shall inform the party so served that a hearing~~  
23 ~~shall be conducted within 60 days after the party has been served.~~  
24 ~~The person who has been issued a complaint may waive the right~~  
25 ~~to a hearing, in which case the regional board shall not conduct a~~  
26 ~~hearing.~~

27 ~~(c) Orders imposing administrative civil liability shall become~~  
28 ~~effective and final upon issuance thereof, and are not subject to~~  
29 ~~review by any court or agency except as provided by Sections~~  
30 ~~13320 and 13330. Payment shall be made not later than 30 days~~  
31 ~~from the date on which the order is issued. The time for payment~~  
32 ~~is extended during the period in which a person who is subject to~~  
33 ~~an order seeks review under Section 13320. Copies of these orders~~  
34 ~~shall be served by personal service or by registered mail upon the~~  
35 ~~party served with the complaint and upon other persons who~~  
36 ~~appeared at the hearing and requested a copy.~~

37 13323. (a) Any executive officer of a regional board may  
38 issue a complaint to any person on whom administrative civil  
39 liability may be imposed pursuant to this article. The complaint  
40 shall allege the act or failure to act that constitutes a violation of

1 law, the provision of law authorizing civil liability to be imposed  
2 pursuant to this article, and the proposed civil liability.

3 (b) The complaint shall be served by ~~personal notice or~~  
4 certified mail *or in accordance with Article 3 (commencing with*  
5 *Section 415.10) of, and Article 4 (commencing with Section*  
6 *416.10) of, Chapter 4 of Title 5 of Part 2 of the Code of Civil*  
7 *Procedure*, and shall inform the party so served that a hearing  
8 *before the regional board* shall be conducted within ~~60~~ 90 days  
9 after the party has been served. ~~The hearing shall be before a panel~~  
10 ~~of the regional board, consisting of three or more members of the~~  
11 ~~regional board as it may specify, or before the regional board. The~~  
12 ~~person who has been issued a complaint may waive the right to a~~  
13 ~~hearing, in which case the regional board shall not conduct a~~  
14 ~~hearing.~~

15 (c) ~~After any hearing, the panel shall report its proposed~~  
16 ~~decision and order to the regional board and shall, at the time it~~  
17 ~~reports its decision to the regional board, supply a copy to the party~~  
18 ~~served with the complaint, the party issuing the complaint, and any~~  
19 ~~other person requesting a copy. Members of the panel may sit as~~  
20 ~~members of the board in deciding the matter. The regional board,~~  
21 ~~after making an independent review of the record and taking such~~  
22 ~~additional evidence as may be necessary and could not reasonably~~  
23 ~~have been offered before the hearing panel, may adopt, with or~~  
24 ~~without revision, the proposed decision and order of the panel. In~~  
25 ~~proceedings under this article for imposition of administrative~~  
26 ~~civil liability by the state board, the executive director of the state~~  
27 ~~board shall issue the complaint and any hearing shall be before the~~  
28 ~~state board, or before a member of the state board in accordance~~  
29 ~~with Section 183, and shall be conducted not later than 90 days~~  
30 ~~after the party has been served.~~

31 (d) Orders imposing administrative civil liability shall become  
32 effective and final upon issuance thereof, and are not subject to  
33 review by any court or agency except as provided by Sections  
34 13320 and 13330. Payment shall be made not later than 30 days  
35 from the date on which the order is issued. The time for payment  
36 is extended during the period in which a person who is subject to  
37 an order seeks review under Section 13320 or 13330. Copies of  
38 these orders shall be served by ~~personal service or by registered~~  
39 ~~mail~~ *certified mail or in accordance with Article 3 (commencing*  
40 *with Section 415.10) of, and Article 4 (commencing with Section*

1 *416.10) of, Chapter 4 of Title 5 of Part 2 of the Code of Civil*  
2 *Procedure* upon the party served with the complaint and ~~upon~~  
3 *shall be provided to* other persons who appeared at the hearing and  
4 requested a copy. (Amended by Stats. 2001, Ch. 869, Sec. 4.  
5 Effective January 1, 2002.) Last Affected Bill - (AB 1664)

6 SEC. 8. Section 13328 of the Water Code is amended to read:

7 13328. After the time for judicial review under Section 13330  
8 has expired, the state board may apply to the clerk of the  
9 appropriate court in the county in which the civil liability or  
10 penalty was imposed, for a judgment to collect the civil liability  
11 or penalty. The application, which shall include a certified copy of  
12 the state board or regional board action, constitutes a sufficient  
13 showing to warrant issuance of the judgment. The court clerk shall  
14 enter the judgment immediately in conformity with the  
15 application. The judgment so entered has the same force and effect  
16 as, and is subject to all the provisions of law relating to, a judgment  
17 in a civil action, and may be enforced in the same manner as any  
18 other judgment of the court in which it is entered.

